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BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF)
IVAN COLE,)
Appellant,)

PCHB No. 79-83

v.)

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

STATE OF WASHINGTON,)
DEPARTMENT OF ECOLOGY,)
Respondent.)

This matter, the appeal of the provisions of Odessa Subarea groundwater permit No. 11812, came before the Pollution Control Hearings Board, Nat W. Washington, Chairman, Chris Smith, and David Akana (presiding), at a formal hearing in Yakima, on March 24, 1980.

Appellant was represented by his attorney, Lawrence L. Tracy; respondent was represented by Wick Dufford, assistant attorney general.

Having heard the testimony, having examined the exhibits, having considered the contentions of the parties, the Board makes these

1 FINDINGS OF FACT

2 I

3 On April 8, 1971, appellant filed an application to appropriate
4 1600 acre-feet (AF) of public groundwater from Section 1, T. 20 N., R.
5 29 E.W.M. in Grant County, Washington. The point of withdrawal and
6 place of use are located within the Odessa Groundwater Management
7 Subarea as defined in ch. 173-128 WAC. In the Subarea, a management
8 program has been adopted to allow issuance of new permits within
9 certain limits considering the safe sustaining yield of the aquifer
10 and the rate of decline of groundwater level. The quantity of water
11 available is based upon the management criteria in ch. 173-130 WAC.

12 II

13 When appellant's application was processed in 1975, the Department
14 of Ecology (DOE) determined that only 328 AF of water for the
15 irrigation of 640 acres could be granted based upon computer
16 evaluation. Appellant requested re-evaluation of the application in
17 view of his original request. Because of the limited information
18 available in the area, DOE agreed to issue a preliminary permit for a
19 well which allowed appellant to withdraw 984 AF at the rate of 4000
20 gallons per minute (GPM) for the irrigation of 640 acres for a year
21 and to collect water level measurements. Based upon this permit,
22 appellant constructed a well and irrigated a portion of his land at a
23 cost of \$245,000. In May of 1979, respondent issued a groundwater
24 permit for 640 AF annually to be withdrawn at a maximum rate of 2000
25 GPM for the irrigation of 640 acres. Appellant appealed the rate and
26 volume provisions of his permit.

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III

The preliminary permit arrangement between appellant and DOE continued for several years and produced data from the 1976 through the 1979 irrigation seasons.¹ The data shows that the water table is declining but that the rate of decline is slowing. DOE estimates that an 8.1 foot decline correlates with an 800 AF withdrawal and is presently willing to issue a permit granting 850 AF of water to be drawn at a rate of 2500 GPM. Appellant contends that 1000 AF of water is available and a permit should be issued in that amount.

IV

Water is available for appropriation above the 850 AF allowed by DOE in this case. The exact amount which is available was not established by appellant.

1. Annual water measurements were as follows:

Year (Spring)	Static Water Level	Decline	Water use associated with Decline (AF)	Notes
1975	203'	0	0	well drilled; driller measurement
1976	219.6'	16.6'	0	start of first irriga tion season
1977	232.2'	12.6'	798	water used, first irrigation season
1978	243.8'	11.6'	1133	water used, second irrigation season
1979	251.9'	8.1'	803	water used, third irrigation season
1980	256.5'	4.6'	821	water used, fourth irrigation season

V

Any Conclusion of Law which should be deemed a Finding of Fact is hereby adopted as such.

From these Findings the Board comes to these

CONCLUSIONS OF LAW

I

The only issue in this matter is whether there is water available for appropriation in the amount requested by appellant. There was no evidence that 1600 AF of water is available for appropriation. Thus it was not shown that DOE did not have substantial reasons to approve a lesser amount of water than appellant applied for. See RCW 90.03.290. But what is the correct "lesser amount?" Under the Odessa Subarea management regulations, water is available for appropriation until the amount requested added to the maximum amount that can be withdrawn by existing rights increase the rate of decline to 30 feet in a three year period. WAC 173-130-130 and -140. In appellant's case, a decision on his application was held in abeyance until new information on groundwater levels was acquired and the information evaluated. Based upon the data acquired, the rate of decline at appellant's well will be less than 30 feet over a three period if water is withdrawn either at 640 AF per year at 2000 GPM or 850 AF per year at 2500 GPM. Appellant may appropriate some amount exceeding 850 AF per year at 2500 GPM until the rate of decline reaches 30 feet in a three year period. This amount should be determined by respondent on remand using a base time commencing in the spring following the first season of irrigation use (WAC 173-130-060).

II

Any Finding of Fact which should be deemed a Conclusion of Law is hereby adopted as such.


From these Conclusions the Board enters this

ORDER

Odessa Subarea groundwater application and permit No. 11812 are remanded to the Department of Ecology for further proceedings.

DONE in Lacey, Washington, this 24th day of April, 1980.

POLLUTION CONTROL HEARINGS BOARD


NAT W. WASHINGTON, Chairman


DAVID AKANA, Member

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2 I, Trish Ryan, certify that I mailed, postage prepaid, copies
3 of the foregoing document on the 24th day of April, 1980, to each
4 of the following-named parties at the last known post office addresses
5 with the proper postage affixed to the respective envelopes:

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21 TRISH RYAN
POLLUTION CONTROL HEARINGS BOARD